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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,820	11/21/2003	Alexander Miller	4452-587	1340

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COHEN, PONTANI, LIEBERMAN & PAVANE
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EXAMINER

WILLIAMS, THOMAS J

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/718,820

Applicant(s)

MILLER ET AL.

Examiner

Thomas J. Williams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,4 and 6-20 is/are pending in the application.
4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 3,4,6-9,11 and 15-19 is/are rejected.
7) ☒ Claim(s) 10 and 20 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Acknowledgement is made in the receipt of the amendment filed May 1, 2006.

Claim Objections

2. Claim 20 is objected to because of the following informalities: lines 4, 6 and 12, the phrases “formable” should be replaced with “flowable” to maintain consistency with the recitation in line 14. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 3, 4, 6-9, 11 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 8510058.

Re-claims 18 and 19, DE '058 teaches in figure 5 a spring strut, comprising: an elongated cylinder 2; a support ring 5 permanently connected to the cylinder (note welds) and forming a

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chamber 6 around the cylinder; a spring plate 3 has a sleeve section extending into the chamber, the sleeve section is adjustable moveable within the chamber relative to the cylinder (i.e. the sleeve section can be rotated and moved longitudinally with respect to the cylinder); a hardened material partially fills the chamber for fixing the sleeve section against movement within the chamber along the cylinder elongation and against rotation of the sleeve section; a circumferentially limited anti-rotation profile comprises at least one opening defined in the sleeve section for preventing rotation of the sleeve section. The opening receives a bolt 12 that is broadly interpreted as a hardened material. The bolt acts to prevent rotation of the sleeve section within the chamber. However, DE '058 fails to teach the hardened material as comprising an initially flowable material that is placed in the chamber in a flowable state and which hardens *in situ* to maintain the sleeve section in the chamber at a desired position.

It is noted that the step of placing an initially flowable material into the chamber is considered a process step, and as such is properly read as a product by process. As stated in section 2113 of the MPEP, "determination of patentability is based on the product itself". However, the examiner will address the particulars of using an initially flowable material as a securing means.

Cushman teaches an initially flowable material (i.e. an epoxy resin) that hardens *in situ* to provide a secure and positive lock between two elements. It would have been obvious to one of ordinary skill in the art to when having constructed the apparatus of DE '058 to have utilized an epoxy resin (or initially flowable material) as the hardened fastener as taught by Cushman, in that each is considered functionally equivalent and the use of an epoxy resin would have reduced manufacturing costs. The method of claim 19 is obvious in view of DE '058 as modified by

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Cushman. Since the process of using an initially flowable material that hardens after being injected into the chamber is taught by Cushman.

Re-claim 3, the support ring 5 comprises a bottom fixed to the cylinder (at weld points) and a sleeve (upwardly extending skirt or wall) extends from the bottom around the cylinder, at least part of the sleeve section 4 is received in the sleeve.

Re-claim 4, the support ring comprises a connecting opening for receiving the initially deformable material, see figure 5.

Re-claim 6, the support ring 5 comprises a circumferentially limited engagement profile (recess for receiving element 12) which receives the initially deformable material.

Re-claim 7, the engagement profile comprises at least one pocket (i.e. the recess).

Re-claim 8, the support ring 5 has an edge (i.e. top edge of the skirt), the at least one pocket extends to a point below the edge.

Re-claim 9, the sleeve section 4 has an inside wall, the anti-rotation profile being provided in the inside wall.

Re-claim 11, the anti-rotation profile comprises at least one opening 13 in the sleeve section 4 of the spring plate 3.

Re-claim 15, the support ring 5 comprises a circumferentially limited engagement profile (i.e. element 12), the engagement profile is received in the anti-rotation profile (i.e. recess 13).

Re-claim 16, DE '058 teaches a means for preventing rotation (such as element 12), as a well as other anti-rotation profiles (such as splined engagement illustrated in figure 2) comprising a profile 7 in the sleeve section and a radial projections 8 in the support ring 5.

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However DE '058 fails teach the anti-rotation feature of figure 2 used in combination with figure 5.

It would have been obvious to one of ordinary skill in the art to have combined the various teachings in DE '058 with regards to the anti-rotation feature when having constructed the spring strut, thus preventing rotation of the spring plate 3 relative to the cylinder 2 prior to insertion of the initially formable material.

Re-claim 17, the radial projections are located outside the chamber, see figure 2.

Allowable Subject Matter

6. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claim 20 would be allowable if rewritten or amended to overcome the objection, set forth in this Office action.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dooley et al. teach the functional equivalence of using an epoxy resin or screws as a fastening means, see column 10 lines 31-37.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Thomas Williams whose telephone number is 571-272-7128. The examiner can normally be reached on Tuesday from 1:00 PM to 7:00 PM and Wednesday-Friday from 6:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James McClellan, can be reached at 571-272-6786. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-6584.

TJW

July 14, 2006

THOMAS J. WILLIAMS
PRIMARY EXAMINER

Thomas Williams
AW 3683
7-14-06